

been implemented to the satisfaction of DEWHA'.³¹ The third was to insert a new condition subjecting Gunns to criminal prosecution and civil penalties of up to \$1.1 million if the mill exceeded the defined environmental limits for its operations. This condition stated: 'The pulp mill must not exceed any maximum limits set out in these conditions or in the EIMP. To avoid doubt, this condition operates despite anything in the EIMP'.³²

As Garrett described it on 5 January, he made these changes because shutting down the mill, as required by the original approval, 'can have a significant environmental impact, as the restart procedure will create higher effluent loads while the biological treatment system starts to operate properly again'. As a result, he had decided that, 'where the cause of any exceedance has been recognised, satisfactory responses have been implemented by Gunns and Gunns is able to show that the limits will not continue to be exceeded ... the mill will not have to shut down'. But because 'it would be unacceptable if Gunns were allowed to exceed the maximum environmental limits without sanction', he had 'varied the conditions of the original approval to insert a new condition ... [stipulating] that exceeding defined environmental limits will constitute a breach of the approval conditions'.³³

Otherwise Garrett repeatedly stressed that he had tightened and toughened Turnbull's original approval. In his press statement, Garrett maintained that 'this decision strengthens and fills the gaps in the inadequate decision made by Malcolm Turnbull'. In his initial media release, Garrett went further, declaring that the new penalty provision filled 'a gaping hole in the former minister's approval for this mill which provided no satisfactory sanctions if Gunns exceeded maximum environmental limits in its operation of the mill'. In two television interviews, Garrett credited himself with 'strengthening' Turnbull's conditions. If he was correct, a company notorious for dictating the terms on which it operated had voluntarily agreed to subject itself to a tougher regulatory regime.³⁴

Malcolm Turnbull was almost alone in fixing on this issue when he returned to work after being on holidays in the week of Garrett's announce-

31 This provision is repeated in Gunns Limited, *Bell Bay Pulp Mill Environmental Impact Management Plan Module L: Precommissioning Management*, 2008, p 71. Gunns Limited, *Bell Bay Pulp Mill Environmental Impact Management Plan Module N: Remedial and Response Strategies*, 2008, p 20. Note, however, that Gunns Limited, *Bell Bay Pulp Mill Environmental Impact Management Plan Module L: Precommissioning Management*, 2008, App B, still states, without qualification: 'The pulp mill will not operate if the monthly average effluent concentrations from the pulp mill exceed the maximum limits'.

32 EPBC Act Variation of Conditions attached to Approval, 5 January 2009, creating new Condition 43A.

33 Peter Garrett, Statement to press conference, 5 January 2009.

34 Peter Garrett, Statement to press conference, 5 January 2009; Peter Garrett, *No Mill Approval until Detailed Environmental Studies Completed*, Media Release, 5 January 2009; 'Peter Garrett discusses Gunns Decision Delay', *7.30 Report*, ABC Television, 5 January 2009; Peter Garrett, Interview with Virginia Trioli, ABC2 Breakfast, 6 January 2009.

ment.³⁵ In four radio interviews which attracted almost no notice because they occurred when media attention had largely moved on to other issues, Turnbull argued that, far from strengthening the enforcement regime governing the mill, Garrett had weakened it. Turnbull emphasised how, under his conditions, if the mill exceeded its maximum limits, it would have to shut down and could be required to install tertiary treatment of its effluent. Turnbull observed, accurately, that the new penalty provision was 'a much smaller stick'. Turnbull also revealed that the new provision had been added not just with the consent of Gunns but at the company's 'expressed request'³⁶ - something the company readily acknowledged.³⁷

Garrett belatedly admitted this when required to give reasons for his decisions. In a statement released on 20 February which attracted no media attention, he acknowledged that discussions between Gunns and his department about 'the potential adverse outcomes from enforcing the requirement for the mill to cease operation if any of the maximum limits ... were exceeded' led to Gunns asking for the new condition. While Garrett continued to emphasise the environmental impacts of closing down and restarting the mill,³⁸ the company's goal was very different. Just as Turnbull had stated, it saw a financial penalty as a smaller sanction which would increase its chances of avoiding the immense costs of shutting down the mill and restarting it if the mill emitted too much effluent.³⁹ Almost 18 months after it had effectively sabotaged the shutdown clause at a State level, Gunns finally succeeded in restricting the operation of the same provision at a federal level.

McArthur River Mine

The McArthur River Mine became an issue again when the Full Federal Court decided the appeal brought by the traditional owners against the federal approval of the mine by Ian Campbell while Environment Minister in the Howard government. When the court decided this case in mid December 2008, Xstrata (as the McArthur River Mine company is now generally known) had all the Territory approvals that it needed as a result of the Martin government's controversial special legislation which overturned the traditional owners' victory in the Northern Territory Supreme Court and played a part in Claire Martin's own political downfall. Xstrata had also completed the earthworks for the diversion of the river - a massive operation creating 6

35 See, however, John Hawkins, 'Gay and Gunns let off the Hook', letter to the editor, *Australian Financial Review*, 9 January 2009.

36 Malcolm Turnbull, Doorstop Interview, 12 January 2009; Malcolm Turnbull, Interview with Tim Cox, *ABC Radio*, 13 January 2009; Interview with Brett Marley, 13 January 2009; Interview with Guy Barnett, 14 January 2009.

37 Interview with Matthew Horan, Gunns Public Relations, 11 February 2009.

38 Statement or reasons for the decision to vary and add to the conditions of approval for the Bell Bay Pulp Mill Project under the *Environment Protection and Biodiversity Conservation Act 1999*, Attachment J, esp paras 5-8, 18.

39 Interview with Matthew Horan, Gunns Public Relations, 11 February 2009.

kilometres of channel – and blocked off the old watercourse. The one threat to the mine, apart from the looming economic crisis which had already seen Xstrata lay off 200 workers, was a finding by the Federal Court that Campbell had breached the EPBC Act when granting his approval.

The court found by a majority of two-to-one that Xstrata's diversion of the McArthur River was and always had been unlawful because Campbell had failed to have regard to a relevant consideration, the Territory mining plan which the EPBC expressly required him to take into account. While the court's judgments do not reveal how it was that Campbell failed to consider this plan before making his decision, it was probably an unintended consequence of the Northern Territory government's decision to keep secret the mining plan which was its key document governing the environmental management of the mine's expansion. In trying to protect Xstrata from public scrutiny, the government put the company in legal jeopardy, as the court's decision forced it to stop its mining and construction works immediately.⁴⁰

The jubilation and relief of many traditional owners at this decision were intense. Malarndirri McCarthy, the Territory Member of Parliament who had crossed the floor when the Martin government legislated to approve the mine, declared: 'I think what traditional owners are asking for is that there's a recognition and respect for the river, that all along this has not been about whether people agree to mining or not. It has always been about moving the actual McArthur River'. The lead plaintiff in the case, Harry Lansens, observed: 'All I want is that old river back, back to the same place ... We've got to live on that river for a long time, our kids got to live on it ... They put it there, they can put it back'.⁴¹ But whether the company would have to do so depended on new ministerial decisions to be made by Peter Garrett. If he granted Xstrata a new approval, the company would be able to continue its operations. If he refused to do so, Xstrata most likely would have to restore the diversion of the river.⁴²

This situation was very much one of the company's own making. In deciding to embark on work on the new mine when it was subject to legal challenge conducted through the Northern Land Council – a cautious agency with a strong record of success in the courts – Xstrata was taking a deliberate risk that it could find itself having invested heavily in the new mine but have no approval for it. As the company embarked on this course in 2008, it should also have appreciated that, by the time the traditional owners' challenge was decided by the Federal Court, the Howard government, which had expressed

40 *Lansens v Minister for Environment* [2008] FACFC 189.

41 'Sacred River Restrains Mine', *Canberra Times*, 5 January 2009; *ABC News*, 18 December 2008.

42 While the Full Federal Court held that the diversion of the river was, and always had been, unlawful, it did not order the restoration of the river. The traditional owners immediately filed fresh proceedings seeking such an order under the EPBC Act. Xstrata also filed an application for special leave to appeal to the High Court against the Full Court's judgment. Both proceedings were discontinued given Peter Garrett's subsequent fresh approval of the diversion and expansion.

strong support for the mine, might no longer be in power. As a result, Xstrata might not only need a new approval but need to secure it from a new federal Labor Environment Minister.

Yet Xstrata also had good experience of securing special treatment to negate its legal defeats when the company wanted to expand its mining operations. For all the prevalence of special legislation in Australia approving big projects, Xstrata had set a record in 2007 when it was the beneficiary of two such Acts in five months. The first was that May when the Territory government legislated to override Justice Angel's decision in relation to the McArthur River. The second was that October when the Queensland Court of Appeal found that there had been a serious flaw in the approval of an expansion of Xstrata's Newlands Coal Mine and the Bligh Labor government immediately legislated to validate Xstrata's lease.⁴³

The deficiencies in the original approval of the mine were good reason for Garrett to take time at the start of 2009 – especially given his recent public statements about the precautionary principle and the importance of key science being done before rather than after government granted environmental approvals. While the second report by the Territory's Environmental Protection Agency about the mine concluded that it would 'not have a significant adverse impact on the national status' of the freshwater sawfish, a protected species under the EPBC Act, this report was one of many such documents which reached conclusions not supported by the evidence it presented. So the report recognised that 'many aspects of the life history, ecology, distribution and abundance of the freshwater sawfish are poorly known'. The report also acknowledged that 'assessment of the value to freshwater sawfish of the McArthur River relative to that of other river systems in northern Australia is hampered by the lack of intensive, comprehensive, quantitative survey across these rivers'. It noted that the company's study repeatedly 'asserted' and 'speculated' rather than 'found'. A key omission was that the company had failed to do a 'baseline study of dispersal of freshwater sawfish in this river system'.⁴⁴

Garrett also had the advantage of coming to this issue without any of the political baggage which lumbered him in relation to the Gunns Pulp Mill. Before January 2009, he had expressed no view about the mine. Nor had federal Labor. The convention that governments generally do not overturn the lawful decisions of their predecessors did not apply in relation to Xstrata

43 Note that Xstrata had also been on the other side of this process in New South Wales after one of its subsidiaries instituted legal proceedings to invalidate another company's mining leases which again were granted by government after the litigation was commenced. As soon as Xstrata won in the New South Wales Court of Appeal in September 2008, the State government announced it would legislate to validate the leases. See *Ulan Coal Mines Ltd v Minister for Mineral Resources* [2008] NSWCA 174; *Mining Amendment (Improvements of Land) Act 2008* (NSW).

44 *McArthur River Open Cut Project Assessment Report 54*, pp 41-42.

because it did not have a legally valid approval. But Garrett was under intense pressure due to the global economic crisis which had just begun to see Australian jobs go in large numbers. In a week which saw BHP reduce its Australian workforce by 3200, the last thing the Rudd government wanted was to be seen to be contributing to the loss of even more jobs.

Garrett looked initially as if he would not be rushed. When interviewed on 15 January, it was put to him that he needed to make a decision by 21 January, because the ore at the mine was running out, prompting the question 'can you meet that deadline?' Garrett's response was 'that 21 January date isn't a date which I'm bound by. What I am bound to do is make a decision effectively and as quickly as I can but in a thorough fashion and I intend to do that'. Because he had 'only just' received the brief and it was 'significant and extensive', he thought 'it would be highly unlikely if the decision were made before the twenty-first of January'.⁴⁵

Xstrata began increasing the public pressure the following day, announcing it needed a preliminary approval from Garrett by 26 January, which should then be finalised 10 working days later after the standard statutory consultation period with other federal ministers. If Garrett did not conform to this timetable, Xstrata declared it would have 'no other option than to lay off 300 workers and suspend all operations'. Five days later, Xstrata went further, deliberately trying to sideline Garrett as it looked as usual for special legislation. It called 'upon Prime Minister Rudd to remedy the McArthur River Mine approval issue once and for all by having his mining minister prepare legislation and have it ready for the first day of Parliament (3 February) and have the legislation passed in the Commonwealth Parliament'.⁴⁶

Yet Xstrata also offered an alternative in case the federal government did not succumb to its demands. This alternative was a much smaller mine, expected to last four years, which would see it extend its open pit to the north without destroying the original channel of the McArthur River. While the company had previously maintained that diverting the river was the only economically viable way in which it could continue its operations, it suddenly found that due to 'technical developments' this new project was 'economic to mine'. When Xstrata applied for federal approval for this new mine on 20 January, a key part of the company's application was its claim that this proposal was not a 'controlled action' because it would have no significant impact on matters of national environmental significance. If Garrett agreed,

45 Peter Garrett, Interview with ABC Darwin Breakfast, 15 January 2009.

46 'Xstrata ups pressure on Garrett to approve NT Mine', *West Australian*, 16 January 2009; 'Xstrata Threatens to lay off 300 Workers', *The Australian*, 17 January 2009; 'Xstrata Threatens to Close Mine, cut Jobs', *Sydney Morning Herald*, 17-18 January 2009; 'Miner in Urgent Challenge to PM on Stand-Off', *The Age*, 21 February 2009. In between, Xstrata stated that only 76 jobs would be lost on Australia Day. See 'Xstrata Zinc Mine Action Vital to save 76 Jobs', *The Australian*, 20 January 2009. Xstrata also tried to seek special leave to appeal to the High Court but failed to provide appropriate documentation. 'Xstrata to appeal McArthur River Mine Decision', *ABC News*, 21 January 2009.

Xstrata could resume mining 20 working days after it lodged its referral, though it would also have to restore the McArthur River unless it brokered a compromise with the traditional owners and the federal government.⁴⁷

The sharpest critique of Xstrata's actions came from Charles Roche, a former executive director of the Northern Territory Environment Centre, who had just taken charge of another environmental group, the Minerals Policy Institute. Roche declared that in calling for immediate approval of its diversion of the river, Xstrata was 'once again seeking to demonstrate' that 'they have Australian politicians on a string' in relation to McArthur River. John Howard and Clare Martin were among those whom Roche identified as having given 'preferential treatment' to the mine at the expense of 'environmental and cultural concerns'. As part of emphasising how Xstrata had already cut its production by 20 per cent and laid off 200 subcontractors before the Federal Court's decision, he wondered whether Garrett and Prime Minister Rudd would 'sacrifice their principles for a half-closed mine, a mine situated on a flood plain that is a marginal financial proposition at best'.⁴⁸

On 22 January – just a day beyond the date when Garrett had thought it 'highly unlikely' that he would be in a position to have worked through such a 'significant and extensive brief' but four days before Xstrata's deadline of 26 January – Garrett made his decision. He announced that he would approve the expansion of the mine subject to new conditions which Xstrata and the Northern Land Council, as well as other federal ministers, would have 10 days to comment on. Garrett claimed that these conditions would ensure that the freshwater sawfish and migratory birds which came within the EPBC Act would be protected.⁴⁹

This haste was not enough for Xstrata. Far from accepting that it was responsible for its own predicament or acknowledging that Garrett had acted within its timetable, the company lambasted him in an attempt to shift the blame for its shedding more workers. Within hours of the minister's announcement, the Chief Operating Officer of Xstrata's Australian zinc division, Brian Hearne, was complaining:

It is a pity that this decision has taken this long as it has put McArthur River Mines in a difficult position. The cost of delay to our business and our suppliers' businesses is irrecoverable. The reality is that we run out of our zinc-lead ore stockpiles ... within the next days. During the week we sought to treat sub-standard ore which was unsuccessful and we therefore have exhausted stockpiles earlier than anticipated. Until we have a final decision from Minister Garrett, we have no choice but to transition to care and maintenance. This means ceasing all on-site operational activities.

While the company's aim was 'to restart immediately following the receipt of final approval', 260 jobs would go within a week and another 30 would go

47 McArthur River Open Pit Extension Project Referral, EPBC 2009/4712, pp 1, 4.

48 'Politicians on 'Mining Giants String'', *The Age*, 21 January 2009.

49 Peter Garrett, *McArthur River Mine – Consultation Begins*, Media Release, 22 January 2009.

the week after, providing the company with a significant saving when there was little demand for its product.⁵⁰

One consequence was that the traditional owners had scant opportunity to respond. Garrett expected them, within 10 working days, to consider 2153 pages of 'additional information' which he had taken into account in making his decision. Given the technical nature of this material, there was no prospect of the traditional owners or their advisers being able to do so, even if they had obtained this information on time which they did not. Garrett also compounded the long standing lack of transparency of the McArthur River Mine process when he asked the traditional owners to treat all this additional information as confidential even though it primarily consisted of environmental reports monitoring Xstrata's activities at McArthur River which the company had prepared for government.

Garrett's decision, which he announced on 20 February, was not significantly different to that made by Campbell, simply requiring Xstrata to undertake more substantial monitoring. As one of the mine's champions, the new Northern Territory Chief Minister, Paul Henderson, revealed even before the exact content of these conditions became public, this monitoring was 'not going to be onerous'. Scott Perkins of the Northern Territory Resources Council agreed following Garrett's announcement, observing that 'not of a lot of those conditions' were 'any different' to those which Xstrata already had to meet under the Territory's approval. Xstrata itself responded by announcing that it would recommence operations immediately and by withdrawing its referral for the smaller mine to the north.⁵¹

The Northern Territory government also chose 20 February as the date when it released the first report of the mine's independent environmental monitor which had been delivered to it two months before. The government's decision to release it on 20 February was just one more instance of the manipulation of the availability of information to protect Xstrata. Had the government released this report earlier, its contents may have led Garrett to impose more stringent measures – and increased public pressure on him to do so. By releasing the report on the day of Garrett's decision, the Territory government not only stopped the report from playing this role but also ensured the report would be overshadowed by news of the mine's reopening.⁵²

Because the report revealed the inadequacies of Xstrata's monitoring programs – including those which were the subject of Garrett's approval

- 50 Xstrata Press Release, 'Xstrata Zinc Australia welcomes today's draft decision by Minister Garrett on MRM', 22 January 2009; 'Xstrata says Govt Approval too late McArthur River Mine', *ABC News*, 23 January 2009; 'McArthur Traditional Owners "misled over Mine"', *ABC News*, 24 January 2009.
- 51 'Xstrata hopeful it can restart mining at McArthur Soon', *ABC News*, 26 January 2009; 'Reopened McArthur River Mine sparks call for tougher laws', *ABC News*, 21 February 2009.
- 52 'Delayed Environment Report of McArthur River Mine Released', *ABC News*, 20 February 2009; 'Rudd under Xstrata's Thumb: Greens', *ABC News*, 22 February 2009.

conditions – it raised profound questions about Garrett's decision to rely on more monitoring by the company. The Independent Monitor found that Xstrata's monitoring programs were 'inadequate to barely adequate in evaluating environmental performance'. The mine's environmental performance was, moreover, 'difficult to assess due to considerable data gaps in the monitoring results provided and inadequate and even, in some cases, non-existent interpretation of the monitoring works undertaken'. A key limitation in the company's approach was its adoption of a reactive monitoring model that could not provide early warning of emerging environmental impacts.⁵³

Garrett's media release about his decision was also notable for his claim that, 'as a condition of approval', he could not have required Xstrata 'to communicate the outcomes of environmental monitoring and other reports with the local community'.⁵⁴ While one section of the EPBC Act may be read as confining the minister's statutory power to impose conditions as limited to achieving better environmental outcomes,⁵⁵ this section should be read in the light of the Act's object 'to promote a co-operative approach to the protection and management of the environment involving governments, the community, landholders and indigenous peoples'.⁵⁶ If interpreted this way, this power extends to requiring disclosure of monitoring reports. This view is confirmed by another section which requires the minister to have regard to 'social matters' when deciding what condition to impose,⁵⁷ which would clearly seem to include requiring the release of key environmental information either to a section of the community with a particular interest in a project or to the public at large.

Garrett's approach is at least as remarkable because, regardless of the extent of his statutory power to impose an approval condition requiring Xstrata to release its monitoring results, Garrett remained free to release this information, like any other data in the possession of his department. Instead Garrett was reduced to 'strongly urging' and 'strongly encouraging' Xstrata to make public the outcomes of its environmental monitoring and other reports including its Mining Management Plan.⁵⁸ But whereas Gunns had proved itself in this respect to be a good citizen when it placed its environmental impact management plan on its website despite being under no statutory obligation to do so, Xstrata ignored Garrett's pleas.

53 Environmental Earth Sciences, *Report No 207136: Independent Monitor Audit Report of the McArthur River Mine, October 2006-September 2007*, Melbourne, 2008, executive summary, pp 10-11, Appendix B.

54 Peter Garrett, *McArthur River Mine Decision remade with extra Conditions*, Media Release, 20 February 2009.

55 EPBC Act, s 134(1), (2), (3). Compare s 133(3) expressly requiring the Minister to release his environmental approvals.

56 EPBC Act, s 3(1)(d). See also s 3(2)(g).

57 EPBC Act, s 136(1).

58 Peter Garrett, Media Release, 'McArthur River Mine Decision remade with extra Conditions', 20 February 2009.

The Gorgon Gas Project

The Gorgon Gas Project on Barrow Island became an issue again early in 2008 when, before acting on their federal and State approvals to construct two LNG trains, the proponents sought approval for a third, which would increase their production of LNG by 50 per cent. If undertaken in this form, the project appeared set to be the largest ever resource project undertaken in Australia. According to the company, it would create up to 6000 jobs during construction and then 3500 direct and indirect jobs through the life of the project. It would boost Australia's gross domestic product by \$64.3 billion. It would increase locally purchased goods and services by \$33 billion. It would generate government revenue of \$40 billion.⁵⁹

Chevron's expansion of the project raised a host of environmental questions directly related to the third train. But opponents of the original decision, led by WWF, argued that the proponents' need for new environmental approvals was also a proper occasion for reconsideration of alternative sites for the project in the light of new technological and economic developments and improvements in the use of triple bottom line processes in Western Australia. They also raised concerns about project splitting by the project proponents – resulting in inadequate consideration of cumulative impacts – not just because of the third LNG train but also because the proponents were raising the prospect of ultimately increasing the project to five (now six) trains.

When Western Australia's Environmental Protection Authority released its assessment of the project in April 2009, it again emphasised that Barrow Island, 'supports at least 24 terrestrial taxa that occur nowhere else in the world', 'provides a refuge for mammals that are rare or extinct elsewhere' and illustrates 'what the fauna of the Pilbara was like before changes in land management practices and the introduction of the non-indigenous predators and competitors severely altered similar ecosystems on the mainland'. The EPA also restated its opposition to the siting of the project in an area of such 'high environmental and unique conservation values', declaring that 'as a matter of principle, industry should not be located on a nature reserve and specifically not on Barrow Island'.⁶⁰

Having voiced these objections, however, the EPA proceeded to focus on the basis on which the project should be approved. Rather than undertake a reassessment of the original proposal, the EPA simply focused on the impacts of the third train. When challenged by WWF, the Appeals Convenor decided that the EPA had made the right decision because the expansion was simply a 'revision' of the original proposal and hence WA legislation excluded the EPA from reconsidering the original proposal. The WA Environment

⁵⁹ Colin Beckett, Gorgon Project Update Speech, 12 August 2008.

⁶⁰ Environmental Protection Authority, *Gorgon Gas Development Revised and Expanded Proposal: Barrow Island Nature Reserve*, 2009, pp 1-2.

Minister, Donna Faragher, concurred as part of confining her decision to new conditions.⁶¹

A key issue was the impact of light on the flatback turtle because the island is one of its main breeding grounds. It was 'generally accepted that turtles are impacted by light emissions which, in the case of nesting females, may deter the use of nesting beaches in the vicinity of the proposal and, in the case of hatchlings, may cause disorientation and increased predation'. A shortcoming of the original approval was that management of new light sources had not been required as a project condition. The EPA responded by concluding that 'the proposal as currently presented does not provide a reasonable prospect for long term viability of the listed marine turtle population' and that a condition should be imposed requiring an unaltered light horizon. But because the proponent objected that this condition was unachievable, the Appeals Convenor recommended that this condition not be imposed. Instead the State government imposed a nebulous requirement of continual improvement of light emissions over the life of the project.⁶²

When the proposal came to Garrett, he also did not consider alternative locations for the project. The legal position was complicated. Under the EPBC Act, a proponent may consider alternatives but is not obliged to. While the minister may be able to require the consideration of alternatives in the guidelines for the various forms of environmental assessment, the relevant regulations do not include the consideration of alternatives.⁶³ As Garrett described it in one interview, 'I wasn't actually legally required to look at questions of alternative sites at all, and I couldn't and I haven't'. In another he stated, very differently:

The legislation doesn't prevent it ... but because the previous Environment Minister, Malcolm Turnbull, had already approved the first two trains the proposed action that came to me didn't include a consideration of those proposed two trains ..., so all I was being required to do was determine where there were any impacts on matters of national environmental significance of the third train.

Either way, according to Garrett, he did not find this 'frustrating ... because the Gorgon proposal had been afoot for a considerable period of the time, the approvals were in place, and ... the desirability of the Government providing for consistency and certainty through the regulatory framework is absolutely essential'.⁶⁴

⁶¹ Environmental Protection Authority, n 60, ii; Appeals Convenor, *Report to the Minister for Environment: Revised and Expanded Gorgon Gas Proposal, Barrow Island Nature Reserve*, 2009, pp 14-15; Donna Faragher, *Minister's Appeal Determination: Appeals against Report and Recommendations – Revised and Expanded Gorgon Gas Project, Barrow Island – Report*, 1323, Chevron Australia, 2009, p 2.

⁶² Environmental Protection Authority, n 60, pp 18-20; Appeals Convenor, n 61, p 59; Faragher, pp 3-4.

⁶³ EPBC Act ss 72(3), 97, 102, Schedule 4.

⁶⁴ Peter Garrett, interview with Sabra Lane, ABC World Today, 26 August 2009; Peter Garrett, interview with Geoff Hutchison, ABC Perth, 26 August 2009; Peter Garrett, interview with Fran Kelly, ABC Radio National, 27 August 2009.

The test to be applied by the minister was another focus of attention. As Garrett recognised at one point: 'It is the case that the Act provides for a consideration of economic and social matters'. But on another occasion he stated that, while he was aware of the Gorgon Project's 'economic potential', it was not germane to my decision-making and they weren't in this case'. He went on to say: 'Had I received, hypothetically, an advice which said unequivocally ... there are not conditions that you can apply that would not see a significant and adverse impact to matters of national environment significance, then I wouldn't have been in a position of approving this project'. This statement was, again, incorrect. The Act does not limit the Minister's power in this way. But Garrett's statement clearly raised the question of the need for such a limitation.⁶⁵

Garrett's decision was to approve the third train subject to conditions which, as with Gunns, he promoted as a significant improvement on those imposed by his Coalition predecessor. As he described it, he secured the agreement of the proponent to 'calibrate the original conditions that Malcolm Turnbull had placed on the initial proposal to strengthen them'. The result was much more in the way of compliance reporting, environmental performance reporting, environment protection planning, environment monitoring programs and quarantine management systems. But the provision in relation to light emissions remained notably vague. The Long-term Marine Turtle Management Plan was simply required to 'specify design features, management measures and operating controls to manage and as far as practicable avoid adverse impacts to the marine turtles'.⁶⁶

This decision-making process was most remarkable for the number of public statements made by other members of the federal government while Garrett was considering what to do. The catalyst was the sale by Chevron to China of LNG from Gorgon worth an estimated \$50 billion over 20 years, the biggest trade deal in Australia's history. The Trade Minister Simon Crean described this deal as 'fantastic news for the Australian economy and for Australian families'. The Resources Minister Martin Ferguson declared that the government 'would not envisage any barriers' to the partners making their final investment decision in Gorgon and that 'there is no way the environment is at risk'. The Finance Minister Lindsay Tanner said of Gorgon:

It's very important for our longer term economy and our longer term financial situation. There's one or two outstanding environment assessments that have to be concluded, as I understand it, but I believe the project is likely to proceed notwithstanding the remaining hurdles.

Prime Minister Rudd similarly expressed his enthusiasm both in parliament and on Twitter. Little wonder that questions were immediately raised

65 EPBC Act s 136(1)(b); Peter Garrett, interview with Leigh Sales, *ABC Lateline*, 26 August 2009; Peter Garrett, interview with Naomi Woodley, *ABC PM*, 26 August 2009; *AAP*, 26 August 2009.

66 Variation Decision Gorgon Gas Development EPBC 2003/1294, 12.4; Peter Garrett, interview with Leigh Sales, *ABC Lateline*, 26 August 2009; Peter Garrett, interview with Fran Kelly, *ABC Radio National*, 27 August 2009.

about Garrett's freedom in making his decision, and that his approval was 'widely seen as a formality', prompting him to declare that he was 'under no pressure whatsoever in relation to this project other than to do my job as a regulator properly'.⁶⁷

The Traveston Dam

The Traveston Dam story is very different. For almost two years the State Labor government's commitment to the dam was absolute. When Premier Peter Beattie announced the dam in 2006, he reckoned it 'vital for securing future water supplies not just for the local community but for the south-east corner', even declaring that the dam would be built whether 'feasible or not'. A year later, the Deputy Premier Anna Bligh was just as fervent when she cast the dam as not just a 'drought-proofing' but a 'future-proofing measure' for which Queenslanders would long be thankful. In the first half of 2008, the new Bligh government was still presenting Traveston as 'the right dam in the right location', 'a key part of the state's \$9 billion water grid'.⁶⁸ Then, seemingly out of the blue, to the amazement of most commentators, the government changed its stance or at least gave some appearance of doing so, creating doubt as to what it actually intended.

The turnabout came on 25 November 2008 when, as widely reported, the State government overturned two key planks in its water policy – not only announcing the deferral of construction of the Traveston Dam but also abandoning its similarly controversial plan to add recycled water to South East Queensland's supplies regardless of dam levels. Yet 25 November was at least as remarkable for what occurred in Canberra. Without any media statements or ministerial announcements – and, as a result, without almost anyone noticing – the federal Department of the Environment released a series of independent scientific reports calling into question the Traveston Dam.

An obvious question was whether these federal reports had triggered or at least influenced the State decision. When Premier Bligh began explaining it to the Queensland parliament, she presented the deferral as if it were purely a result of State processes in which the Coordinator-General, long identified as a champion of development,⁶⁹ had suddenly shown unprecedented

67 Simon Crean, interview with Neil Mitchell, Radio 3AW, 18 August 2009; *AAP*, 19 August 2009; 21 August 2009, 23 August 2009; *The Australian*, 19 August 2009; 20 August 2009; 27 August 2009; *Sydney Morning Herald*, 20 August 2009.

68 Peter Beattie, *Queensland Hansard*, 9 June 2006, p 2454; *The Bartlett Diaries*, 20 July 2006, quoted by Wendy Pyper, 'Queensland's Dam Strategy raises Bigger Questions', *Ecos*, No 133, October-November 2006, p 15; Anna Bligh, Deputy Premier, Treasurer and Minister for Infrastructure 'Queensland adds another 1200 pages to Traveston Crossing Dam Inquiry', 1 June 2007; Paul Lucas, Queensland Deputy Premier and Minister for Infrastructure, 'Dam Progress backs the Process', Ministerial Media Statement, 11 March 2008.

69 'Queensland Bilateral Signed', *National Environmental Law Review*, September 2004, p 13.

environmental concern. She declared that, as part of the Coordinator-General assessing the environmental impact of the dam in line with his statutory obligations, he had 'identified that the Mary River catchment, including the dam location', had 'suffered significant disturbance' which had seen 85 per cent of the study area cleared of native vegetation. The Coordinator-General had 'raised concerns about the impact on habitat and achieving necessary rehabilitation and offsets for threatened species including the Australian lungfish, the Mary River cod, the Mary River turtle and the southern barred frog'. The Coordinator-General had also advised Queensland Water Infrastructure, the government company established to construct the dam, that 'a number of mitigation measures to minimise impact on flora and fauna should be undertaken prior to construction of the dam'.

As the Premier continued, however, she acknowledged the role of the federal government but did not refer to its independent reports. She stated: 'The Coordinator-General met with me on 13 November and indicated that should he approve the project it would need to include these [mitigation] measures and without these measures the project was unlikely to receive Federal Government approval'. Her advice from Queensland Water Infrastructure was that this work could be undertaken but 'developing and proving the effectiveness of these measures' would 'result in a delay in construction of at least several years'. The processes would take so long because of the complexity of 'rehabilitating riparian habitats'. For example, Queensland Water Infrastructure had already indicated that 'approximately two years is required after establishment to ensure that at least 90 per cent of any planted seedlings survive', while 'approximately five years is required after planting to ensure that the habitat is suitable for fauna'.⁷⁰

Some took this announcement at face value. Kevin Ingersole, the President of the Save the Mary River Coordinating Group, observed: 'What's a shock is that Colin Jenson, the Queensland government Coordinator-General, has the guts to tell the Premier this will never fly. That shocked me because I thought we'd have to go the whole nine yards to Canberra for this to get knocked on the head'. Others linked this decision to an increase in dam levels in South East Queensland which, at least temporarily had taken pressure off the State government. Still others saw that, having lost the seat of Noosa over the issue at the 2006 election and had another member become the State's first Green MP in 2008 partly because of Traveston, Bligh was desperate to avoid losing more seats over the dam at the 2009 State election. Cate Molloy, the former ALP member for Noosa, whose opposition to the dam had resulted in Labor disendorsing her in 2006, described the Premier's statement as 'just more damage control', 'all about taking away a platform for the Liberal National Party and the Greens in the next election'.⁷¹

70 *Queensland Hansard*, 25 November 2008.

71 'Government MP defects to greens', *The Courier Mail*, 5 October 2008; 'Environmental Concerns stall Traveston Dam Project', *ABC News*, 25 November 2008; 'Mary River Residents celebrate Victory in Campaign against Traveston Dam', *The Australian*, 26 November 2008; 'Traveston delay leaves residents "in limbo"', *ABC Sunshine*

Most of the immediate discussion focused on whether the government would still proceed with the dam. While the Premier informed Parliament on 25 November that 'the Government remains committed to Traveston Crossing Dam and will do everything in our power to see it built', her statement was taken as a first step towards abandoning the dam which the government was not yet prepared to announce because it did not want to be seen to have wasted \$450 million on the project, causing significant disruption and distress to residents of the Mary River Valley in the process.⁷² The following day, the Queensland Minister for Sustainability, Andrew McNamara, made the dam seem a long way off when he told ABC Radio that Queensland Water would complete its rehabilitation before seeking federal approval. But then he changed his stance so as to fall in line with Anna Bligh who, as part of emphasising her government's commitment to the dam, told parliament:

There is no delay in the approval time frame ... This approval process ... will be completed in 2009, as it was always going to be. They will know in early 2009 the decision of the State Coordinator-General and I expect that within two or three months of that they will know the decision of the federal government.⁷³

The question of how rehabilitation of the river might be necessary or sufficient to gain federal approval excited no attention. The only elaboration of any consequence came when Queensland Water Infrastructure posted a 'project update' on its website suggesting that, far from undertaking extra environmental measures to obtain federal approval, Queensland Water was simply planning to change the sequence of its operations. It explained:

Previously following Project approval, work would have commenced simultaneously on the construction, environmental measures and community projects. It is now anticipated that, following Project approval, work will commence on environmental measures and community projects ... When relevant conditions of approvals on environmental measures are met, it is expected that construction will then commence on dam and other associated infrastructure.

Most significantly, there was no difference between the 'environmental measures' which the company had planned 'previously' and those it planned 'now'. In both cases, they were described as a 'Freshwater Species Conservation Centre, habitat and vegetation rehabilitation, catchment management initiatives etc'.⁷⁴

and Cooloola Coasts, 26 November 2008; Sue Neales, 'Traveston Dam tests our Environmental Process', *Ecos*, No 146, December 2008-January 2009, p 146.

72 *Queensland Hansard*, 25 November 2008; Environmental Defenders Office (Qld), *EDO Bulletin*, November 2008, p 1.

73 'Bligh denies local "in limbo" with Traveston Dam Delay', *ABC News*, 26 November 2008; *Queensland Hansard*, 26 November 2008.

74 <<http://www.qldwi.com.au/LinkClick.aspx?link=PDFs%2ftraveston%2fproject%2fInfo%2fNewsletters%2fQW1+DL+Dec+08.pdf&tabid=36&mid=411>> (accessed 14 January 2009).

The role played by Peter Garrett as federal Minister for the Environment was the subject of even less scrutiny. *The Australian* was alone in suggesting that Bligh's deferral of the dam was 'in response to mounting concerns in her Government that the project would be torpedoed' by Garrett whom the newspaper claimed was looking for at least one major project on which he could demonstrate his environmental credentials. *The Australian* was equally alone in suggesting that it was 'an ominous sign' of Garrett's intentions, when the canoeist Steve Posselt arrived in Sydney in October after paddling from the Mary River as a protest against the Traveston Dam, and Garrett, the one-time activist who had become very careful to keep his distance from protesters, was at the Opera House to greet Posselt and take his bag of letters opposing the dam. While Garrett was pursued by television, radio and print media about his actions in relation to the Gunns Mill and the McArthur River Mine, *The Australian* was alone in looking for his response to the Queensland government's new stance on the Traveston Dam and all he said was 'I welcome rigorous consideration being given to potential environmental impacts of the dam by the Queensland Government'.⁷⁵

The independent reports commissioned by Garrett attracted almost no attention. Their focus was the environmental impact statement submitted by Queensland Water Infrastructure which was already 12 volumes in April 2007 and grew by another 21 volumes and 1200 pages that June so it weighed in at 20 kilograms. As described by Premier Bligh, this impact statement was 'rigorous', 'based on the best available science and engineering advice' and presented 'a rock solid case to approve the Traveston dam'.⁷⁶ Garrett's decision to commission the independent reports suggested a very different view of the EIS – and also that the minister either did not expect the flaws in the EIS to be exposed through the process of public comment or that Queensland Water and the Queensland Coordinator-General would ignore these critiques. In other words, Garrett did not trust the State assessment process.

The federal department started commissioning reports in January 2008 when Queensland Water had released its EIS but had not yet prepared its supplementary report in response to the public's comments. The department began with two reports – one by Professor Stuart Bunn of the Australian Rivers Institute at Griffith University completed in May which examined the need for the dam and another by Bewsher Consulting, a firm of floodplain management experts, on the hydrological modelling which was completed in June. After Queensland Water had completed its supplementary report, the department commissioned a further report from Stuart Bunn and two more reports from Associate Professor Keith Walker of the University of Adelaide and Dr Gerald Kuchling which focused on threatened species. All these

75 'Environment Concerns stall Traveston Dam Project', *ABC News*, 25 November 2008; 'Federal Environment Minister Peter Garrett applauds deferral of Traveston Dam by Queensland Premier Anna Bligh', *The Australian*, 26 November 2008; 'Weather Politics of Queensland Premier trumps Policies', *The Australian*, 26 November 2008.
76 *Queensland Hansard*, 18 October 2007; 'Report clears way for Traveston Dam', *Sydney Morning Herald*, 18 October 2007.

reports were completed in October–November 2008 without even the dam's main opponents, the Save the Mary River Coordinating Group, realising that they had been commissioned until they were released.

Just one of these reports, by Bewsher Consulting, was more or less positive. While critical of the model's failure to take account of climate change, it otherwise found that the model had been 'rigorously established and calibrated'.⁷⁷ From what has been publicly revealed about Stuart Bunn's first report, which has not been released, he argued that there would be no need for the dam if the Queensland government embraced demand management and storm water harvesting.⁷⁸ The three other reports were scathing about the impact statement's consideration of a range of species, especially the critically endangered Mary River cod, the endangered Mary River turtle, and the vulnerable Australian lungfish. These reports lambasted Queensland Water's reliance on strategies such as 'fishways' to ensure the survival of these species which were either untested – and hence highly speculative (in relation to the Mary River turtle and the Mary River cod) – or tested unsuccessfully (in relation to the Australian lungfish).

The second report by Bunn was devastating, though his language was restrained. Bunn's simple formula was to list key errors in Queensland Water's main findings in relation to the Mary River cod, the Mary River turtle and the Queensland lungfish. 'Contrary to the summary statement of EIS Supplementary Report', he began before identifying six errors each time, leaving readers to wonder what of any significance the impact statement had got right. The other reports by Associate Professor Keith Walker of the University of Adelaide and Dr Gerald Kuchling were more colourful. Kuchling described the Queensland government's proposed strategies for mitigating the dam's impact on the threatened species as 'speculative, untested, not presented in detail, and without a firm commitment for implementation'. He identified key parts of the impact statement to be 'inappropriate', 'grossly insufficient' and 'simplistic' when they were not simply wrong. Walker observed: 'In many cases, the EIS makes assumptions on the basis of scant evidence and draws conclusions about impacts with little or no justification'. He identified the mitigation and offset 'strategies' in the reports as 'often ill-defined', involving 'significant risks of failure'. While welcoming Queensland Water's proposal to create a Freshwater Species Conservation Centre on the Mary River, he highlighted how the need for the centre was 'a reflection of how little is known of the biology and ecology of the iconic species' and that 'this information should be available *before* a project on the scale of the Traveston Crossing Dam is contemplated ... and should not be invoked as a means to repair damage *after* the environment is changed'.⁷⁹

77 Bewsher Consulting Pty Ltd, *Hydrological Modelling Review Traveston Crossing Dam Draft EIS Final Report*, 2008, p 1.

78 Stuart E Bunn, *Review of EIS and Supplementary Materials on proposed Traveston Crossing Dam, Mary River, SE Qld: II: Final Report*, 2008, p 19.

79 Bunn, n 78, pp 6, 10, 17; KF Walker, *Environmental Impact Statement for Traveston Crossing Dam (Mary River, Queensland: A Review with regard for Species of Concern under*

More generally, this process raises questions about the utility of the prime way in which environmental impact statements are usually tested – by exposing them to public comment. While there are some members of the public like Dr Stuart Godfrey in relation to the effluent from the Gunns mill, who have the time, inclination, expertise and independence to expose the flaws in a highly technical EIS, such individuals are rare. Even though the Traveston EIS attracted over 11,200 individual submissions and at least one of these submissions from the Hervey Bay Council was professionally prepared by consultants,⁸⁴ Keith Walker's independent report reveals how these submissions only indirectly addressed a key issue concerning the impact of the flow on the river – namely, whether, when calculating the pre-development flow of the river, it was best to consider the mean flow, the median flow or both. Walker's expert report was necessary to draw out the significance of this issue.⁸⁵

The Traveston Dam starkly demonstrates the flaws of the standard process of having environmental impact statements prepared by consultants employed by the project proponents. While often described as 'independent' – a much abused term in this context, as Hannes Schoombbee's chapter on the Gorgon Gas Project reveals – these consultants typically act as advocates for the project, preparing statements designed to allow the project to proceed with a minimum of modifications.⁸⁶ Just as it is now recognised in the financial sector that a stop needs to be put on credit rating agencies being paid by the companies that they assess because of the blatant conflict of interest,⁸⁷ so the same applies in relation to environmental impact assessment. While one option is to employ independent reviewers as a matter of course, it would be better to have impact statements prepared independently.

The reports commissioned by Peter Garrett into the Traveston Dam expose this problem in an exceptional way – not only because of their public release (which often does not occur with such documents) but also because these reports were not written with the usual politeness of consulting firms but with the freedom of individual researchers. While the Queensland government was intent on the Traveston Dam, casting doubts on its Coordinator-General's capacity to evaluate the dam's impact statement with appropriate transparency, accountability and independence,⁸⁸ there is no reason to think that the Traveston impact statement was any worse than those prepared for other projects. In commissioning and releasing the

84 See Hervey Bay City Council, *Traveston Dam EIS Review Final Report*, 2008. The Traveston Dam also attracted more than 5000 pro forma public submissions.

85 Walker, n 79, p 9.

86 Peter Spearritt, 'The water crisis in Southeast Queensland: How desalination turned the region into carbon emission heaven' in Patrick Troy (ed), *Troubled Water: Confronting the Water Crisis in Australia's Cities*, ANU E-Press, Canberra, 2008, p 31.

87 See, for example, 'Robert Reich joins the 7.30 Report', *7.30 Report*, ABC Television, 5 February 2009.

88 Australian Conservation Foundation, Submission to the Senate Rural and Regional Affairs and Transport Committee, *Inquiry into Additional Water Supplies for SouthEast Queensland – Traveston Crossing Dam*, 5 April 2007.

independent reports into the Traveston Dam, Garrett provided one of the most compelling reasons why the current system of environmental assessment should be abandoned.

The Bligh government retained its commitment to the Traveston Dam in 2009. While the Minister for Sustainability Andrew McNamara lost his seat of Hervey Bay in the March election, at least partly because of the government's stance over the dam, the government maintained its course. Its budget in June set aside more money for projects related to the dam. In September the Coordinator-General sent his draft report and conditions for the dam to the Commonwealth Department of Environment for comment. After Canberra responded, he released his final report in October in which he approved the project subject to 1200 conditions, the most important of which, so far as threatened species were concerned, focused on habitat restoration.⁸⁹

As the State government did so, the obvious implication was that, having lost the seats which were most directly affected by the dam proposal, it saw no electoral reason not to proceed. In fact, if it abandoned the dam, it could suffer more electoral damage because of the waste of public money involved in unnecessarily buying land for the dam. The State government's apparent assumption was that, for all the federal Department of the Environment's obvious reservations about the project, Canberra would not stop the dam proceeding. The State government expected that, as with other highly controversial projects, the federal government would opt for an abundance of conditions, management plans and monitoring. It may well have presumed from Garrett's record that he lacked the will or political power to block a big State project and that, like major private proponents, it could bully and bluff its way to approval.

Yet the signs had never been clearer that the federal government might reject a major State project in which there had been such State investment. The independent reports released in November 2008 were the strongest indication. But the stance taken by Prime Minister Rudd was also significant. Far from expressing his support for the dam – as he and many other members of federal Cabinet had done in relation to the Gorgon Gas Project on Barrow Island – he emphasised that the dam was a matter for Garrett to decide. In early November 2009 Rudd declared: 'Under the law of Australia, ... it's essential for [Mr Garrett] to make an unfettered, independent environmental choice. That's what's required under the statutes of Australia, and that's what will occur'.⁹⁰

Still Garrett's decision was one genuinely awaited with bated breath because of the possibility that it could go either way. This uncertainty was manifest on 9 November 2009, just two days before Garrett made his decision, when Bob Brown, the leader of the Australian Greens, spoke out. Brown's fears that the federal Labor government would be unwilling to strike down a project so dear to a State Labor government were patent when he declared:

89 *ABC News*, 22 March 2009; 17 June 2009.

90 *AAP*, 3 November 2009.

If Peter Garrett gives the go-ahead to that dam we might as well tear up the nature and environment laws, they'd mean nothing ... It would be an indication that party politics means more than a real assessment of the nation's environmental laws and what they mean ... the question for Peter Garrett is now one of historical significance.⁹¹

By 11 November, when Garrett announced that he was refusing to approve the dam, he had received two more independent reports about it. One was again from Professor Stuart Bunn of Griffith University who advised that, for all the importance of the rehabilitation work proposed by the Queensland government, this work could not be expected to make up for the impact of the dam on nationally significant species. More generally, Bunn advised that the Queensland Water response did 'not adequately address all of the substantive issues raised in the previous independent reviews or provide any new convincing information in relation to these matters'. The other report came from the Centre for International Economics which found that Queensland's economic case for the dam was based on a number of 'contentious' assumptions, which were 'not always transparent'. As a result, it was 'difficult to understand the analysis' and it could not be stated with confidence that the dam was a cheaper means of providing water than desalination plants which would not have the same impact on nationally protected species.⁹²

In rejecting the dam, Garrett had to articulate what standard the project was flouting. Although the Act did not explicitly give primacy to environmental protection over economic exploitation, Garrett cast it that way when he emphasised that he 'had regard to the overriding objects of the Environment Protection and Biodiversity Conservation Act 1999, including the protection of the environment, the conservation of biodiversity, and the promotion of ecologically sustainable development and the need to consider the precautionary principle'. He also declared, though again it is not explicit in the Act, '[a]s Environment Minister, my responsibility is to ensure that nationally listed species are protected'.⁹³

As Garrett explained it, he based his decision on the science presented to him which showed that 'the project would have serious and irreversible effects of nationally listed species' contributing to their 'further decline'. Garrett concluded that 'the effectiveness of the measures being proposed' by the Coordinator-General 'was highly uncertain, a number of these measures couldn't be tested until the dam was operational and the impacts were already being felt'. As a result, 'no conditions or mitigation measures that would adequately guarantee' the species' protection 'could be imposed on

91 AAP, 9 November 2009.

92 Stuart Bunn, 'Traveston Crossing Dam, Mary River, SE Qld: QWI Response to Reviewer's Report, III: Reply', 2009; Centre for International Economics, *Review of Economic Aspects of Traveston crossing Dam Environmental Impact Assessment Documentation*, 2009, pp 7-9.

93 Peter Garrett, Media Release, 11 November 2009; Peter Garrett, *Refusal of Approval, Traveston Crossing Dam*, 2 December 2009; Peter Garrett, Media Release, 2 December 2009.

this project'. Garrett consequently rejected the dam because it would have 'unacceptable impacts' on threatened species – a test found elsewhere in the Act, though not in relation to the ministerial consideration of approvals and conditions. A key related consideration, given his obligation 'to balance environmental, economic and social impacts', was that the report of the Centre for International Economics cast 'serious doubt about the economic benefits of the dam'. He observed: 'The likely economic and social benefits of this proposal do not outweigh the serious environmental impacts on our nationally protected species'.⁹⁴

The result was predictable fury from the Queensland government which soon made a \$265 million write down in unrecoverable costs for land and transaction expenses from the dam.⁹⁵ *The Australian* railed against Garrett for putting 'the needs of a turtle that breathes through its bottom ... ahead of the needs of 4 million people who will live in southeast Queensland within 20 years'. Notwithstanding all the uncertainties about the economic case for the dam, it charged Garrett with making 'a misanthropic decision that pays no heed to the pace of growth in a region that relies on dams built decades ago to service half the current population'.⁹⁶ The most significant plaudit came from Bob Brown who likened Garrett's decision to the 'events 25 years ago with the Franklin River'.⁹⁷

94 EPBC ss 74B-74D; Peter Garrett, Media Release, 11 November 2009; Peter Garrett, *Refusal of Approval, Traveston Crossing Dam*, 2 December 2009; Peter Garrett, Media Release, 2 December 2009.

95 *The Australian*, 12 November 2009; *The Courier Mail*, 14 November 2009; 4 December 2009.

96 *ABC News*, 12 November 2009; *The Australian*, 12 November 2009; 13 November 2009; *The Courier Mail*, 14 November 2009.

97 AAP, 11 November 2009; *ABC PM*, 11 November 2009.